

# Employment Discrimination and Equal Opportunity for Certain Veterans Who Served on Active Duty and Special Disabled Veterans

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Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended; Veterans Employment Opportunities Act of 1998 (VEOA); Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA); and Jobs for Veterans Act of 2002 (JVA) (38 USC §4212, as amended; 41 CFR Chapter 60, Part 60-250)

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## Who is Covered

Title 38 of the U.S. Code, Section 4212 generally covers employers with federal contracts or subcontracts that meet the threshold amount specified in the statute. The date on which the employer entered its federal contract is a key factor in determining whether or not the contract is covered under Section 4212. In the case of federal contracts and subcontracts entered into before December 1, 2003, the employer is covered under Section 4212 if the amount of the federal contract or subcontract is \$25,000 or more. In the case of federal contracts or subcontracts entered into on or after December 1, 2003, the employer is covered under Section 4212 if the federal contract or subcontract is in the amount of \$100,000 or more. Contracts covered by Section 4212 and its implementing regulations may be for the purchase, sale, or use of personal property, nonpersonal services, or both. In this context, the term "nonpersonal services" includes services such as construction. Agreements in which the parties stand in the relationship of employer and employee are not covered.

The following types of contracts and subcontracts, entered into before December 1, 2003, are not covered under Section 4212:

- Those for less than \$25,000;
- Those for indefinite quantities, unless the purchaser has reason to believe that the cost in any one year will be \$25,000 or more;
- Those for work that is performed outside the U.S.; and
- Those with state or local governments, except for the specific government entity that participates in work on or under the contract.

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The following types of contracts and subcontracts, entered into on or after December 1, 2003, are not covered under Section 4212:

- Those for less than \$100,000;
- Those for indefinite quantities, unless the purchaser has reason to believe that the cost in any one year will be \$100,000 or more;
- Those for work that is performed outside the U.S.; and
- Those with state or local governments, except for the specific government entity that participates in work on or under the contract.

The Deputy Assistant Secretary may grant a waiver from the requirements of Section 4212 in the following circumstances:

- For specific contracts, subcontracts, or purchase orders, if special circumstances in the national interest require such an exemption;
- For facilities not related to performance of the contract, as determined by the Deputy Assistant Secretary upon written request by the contractor; and
- Contracts and subcontracts involving national security, if the head of the contracting agency determines both that (1) the contract is essential to national security, and (2) noncompliance with a particular requirement of Section 4212 or the regulations with respect to the process of awarding the contract is essential to national security.

Until Congress passed the Veterans Employment Opportunities Act of 1998 (VEOA), Section 4212 applied to contractors and subcontractors with contracts of more than \$10,000. In addition, only “special disabled veterans” and “veterans of the Vietnam era” were protected under the section.

In the VEOA, Congress raised the minimum contract amount to \$25,000 and expanded the application of Section 4212 to include other protected veterans. In the Veterans Benefits and Health Care Improvement Act (VBHCIA), Congress added recently separated veterans to those groups of veterans protected under VEVRAA. In the Jobs for Veterans Act (JVA), Congress raised the minimum contract amount to \$100,000 and changed the categories of veterans that are covered under Section 4212. In addition, the JVA changed the manner in which federal contractors are to comply with the requirement to list job openings with the state employment security agency.

The JVA amendments to VEVRAA apply only to federal contracts and subcontracts entered on or after December 1, 2003. The regulations implementing Section 4212, found at 41 CFR Part 60-250, will be updated to reflect these changes. The changes in the contract coverage thresholds and the categories of covered veterans were made by statutory amendments, however, and are in effect even though the regulations have not yet been amended. As discussed below, the changes to the mandatory job-listing requirement will take effect when the Department of Labor (DOL) issues final regulations implementing the JVA amendments.

## Definitions

Under Section 4212, a “veteran of the Vietnam era” means a veteran of the U.S. military, ground, naval, or air service, any part of whose service was during the period August 5, 1964 through May 7, 1975, who (1) served on active duty for a period of more than 180 days and was discharged or released with other than a dishonorable

discharge, or (2) was discharged or released from active duty because of a service-connected disability. “Vietnam era veteran” also includes any veteran of the U.S. military, ground, naval, or air service who served in the Republic of Vietnam between February 28, 1961 and May 7, 1975.

NOTE: JVA eliminated Vietnam era veterans as a protected category under VEVRAA. However, most Vietnam era veterans will continue to be protected under other categories.

A “special disabled veteran” means a veteran who served on active duty in the U.S. military ground, naval, or air service and (1) who was discharged or released from active duty because of a service-connected disability, or (2) who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) for certain disabilities under laws administered by the Department of Veterans Affairs (*i.e.*, disabilities rated at 30 percent or more, or at 10 or 20 percent if the veteran has been determined to have a serious employment handicap).

A “disabled veteran” means a veteran who served on active duty in the U.S. military ground, naval, or air service: (1) is entitled to disability compensation (or who but for the receipt of military retired pay would be entitled to disability compensation) under laws administered by the Secretary of Veterans Affairs, or (2) was discharged or released from active duty because of a service-connected disability.

A “recently separated veteran,” with respect to federal contracts and subcontracts entered into before December 1, 2003, means any veteran who served on active duty in the U.S. military ground, naval, or air service during the one-year period beginning on the date of such veteran’s discharge or release from active duty. With respect to federal contracts and subcontracts entered into on or after December 1, 2003, “recently separated veterans” means any veteran who served on active duty during the three-year period beginning on the date of such veteran’s discharge or release from active duty.

An “other protected veteran” means any other veteran who served on active duty in the U.S. military ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized, other than a special disabled veteran, veteran of the Vietnam era, or recently separated veteran.

An “Armed Forces service medal veteran” means a veteran who, while serving on active duty in the U.S. military ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 Fed. Reg. 1209).

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## Basic Provisions/Requirements

### *For contracts entered into before December 1, 2003:*

Section 4212 requires covered contractors and subcontractors to take affirmative steps to employ qualified **Vietnam era veterans, special disabled veterans, recently separated veterans (1 year), and other protected veterans**. This obligation covers the full range of employment and personnel practices, such as recruitment, hiring, rates of pay, upgrading, and selection for training. As part of this obligation, contractors with a federal contract or subcontract of \$25,000 or more that was entered into before December 1, 2003, must list most job openings with the local office of the State Employment Service or with DOL’s America’s Job Bank ([www.ajb.org](http://www.ajb.org)). The State Employment Service must give veterans’ priority when making referrals for job openings.





In addition to raising the contract coverage threshold, the JVA amended Section 4212 by changing the categories of veterans covered under the law, and the manner in which the mandatory job-listing requirement is to be implemented.

***For contracts entered into on or after December 1, 2003:***

Section 4212 requires covered contractors and subcontractors to take affirmative steps to employ qualified **disabled veterans, recently separated veterans (3 years), Armed Forces Service Medal veterans, and other protected veterans**. Under the JVA, contractors with a federal contract or subcontract of \$100,000 or more that was entered into on or after December 1, 2003, are required to list their job openings with an appropriate employment service delivery system. In addition to listing their employment openings with an appropriate employment service delivery system, the JVA provides that contractors may list their employment openings with a one-stop career center, other appropriate service delivery points, or America's Job Bank. New regulations are needed to implement the changes in the mandatory job-listing requirement, and are currently under development. Until the final regulations implementing the JVA amendments go into effect, contractors may continue to fulfill their job listing requirements by using either their local employment service office or America's Job Bank.

Contractors who have contracts that were entered into both before, and on or after December 1, 2003, are covered by both sets of requirements.

***For all covered contractors:***

The regulations implementing Section 4212 include the obligation to refrain from discrimination in employment against protected veterans. The regulations also require all covered contractors and subcontractors to include a specific equal opportunity clause in each of their nonexempt contracts and subcontracts. The regulations provide the required language for this clause at 41 CFR 60-250.5; to view the regulations visit [www.dol.gov/dol/allcfr/ESA/Title\\_41/Part\\_60-250/41CFR60-250.5.htm](http://www.dol.gov/dol/allcfr/ESA/Title_41/Part_60-250/41CFR60-250.5.htm).

Covered contractors and subcontractors are also required to make reasonable accommodations for the known physical or mental limitations of qualified individuals with disabilities, unless providing an accommodation would create an undue hardship. In addition, covered contractors and subcontractors are required to take all necessary actions to ensure that no one attempts to intimidate or discriminate against any individual for filing a complaint or participating in a proceeding under Section 4212.

For contracts entered into before December 1, 2003, under Section 4212, each employer that has both (1) a federal contract or subcontract of \$50,000 or more and (2) 50 or more employees must prepare, implement, and maintain a written affirmative action program (AAP) covering each of its establishments. The employer must review and update the program annually, and it must be available for inspection by any employee or applicant for employment, as well as by the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor's Employment Standards Administration. The program may be integrated with, or kept separate from, any other affirmative action program the employer is required to prepare.

As a result of the JVA amendments, for contracts entered on or after December 1, 2003, the threshold for AAP coverage is a contract of \$100,000 or more.

Therefore, under Section 4212, each employer that has both (1) a federal contract or subcontract of \$100,000 or more and (2) 50 or more employees must prepare, implement, and maintain a written AAP covering each of its establishments.

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## Employee Rights

Employees and applicants for employment with a covered contractor or subcontractor have the right to file a complaint with OFCCP if they believe that the contractor or subcontractor has discriminated against them on the basis of veteran's status. Such complaints may be filed online at OFCCP's How to File a Compliant Web page ([www.dol.gov/esa/regs/compliance/ofccp/pdf/pdfstart.htm](http://www.dol.gov/esa/regs/compliance/ofccp/pdf/pdfstart.htm)).

Anyone may call OFCCP with a question about interpreting the regulations, filing a complaint, or any other related matter. The main telephone numbers for OFCCP's national offices are 202-693-0101 and 202-693-1337 (TTY). Additional telephone numbers may be found at on OFCCP's Office Contact Web page ([www.dol.gov/esa/contacts/ofccp/ofcpkeyp.htm](http://www.dol.gov/esa/contacts/ofccp/ofcpkeyp.htm)).

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## Compliance Assistance Available

If you need more information pertaining to OFCCP or any other issue related to federal contractors' equal employment opportunity and affirmative action obligations, you can:

- Visit OFCCP's Web site ([www.dol.gov/esa/ofccp/index.htm](http://www.dol.gov/esa/ofccp/index.htm));
- Call OFCCP's Toll-Free Help Desk at 1-800-397-6251; or
- Contact an OFCCP District or Area office in your local area ([www.dol.gov/esa/contacts/ofccp/ofnation2.htm](http://www.dol.gov/esa/contacts/ofccp/ofnation2.htm)).

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## Penalties/Sanctions

OFCCP investigates for violations of the Act either through compliance evaluations or in response to complaints. If a violation is found, OFCCP may ask the federal contractor or subcontractor to enter into conciliation negotiations. If conciliation efforts fail, OFCCP may initiate an administrative enforcement proceeding by filing an administrative complaint against the contractor or subcontractor.

If OFCCP files an administrative complaint, the contractor or subcontractor has 20 days to request a review by an Administrative Law Judge (ALJ), who hears the case and recommends a decision. DOL's Administrative Review Board issues final decisions. If the contractor or subcontractor is dissatisfied with the ALJ's decision, it may appeal the decision to the Board.

If the Board finds that the contractor or subcontractor has violated Section 4212, it may order the contractor or subcontractor to provide appropriate relief, which may include restoration of back pay and employment status and benefits for the victim(s) of discrimination. Depending upon the circumstances, violations also may result in cancellation, suspension, or termination of contracts, withholding of progress payments, and debarment.

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## Relation to State, Local, and Other Federal Laws

Section 4212 and its implementing regulations apply only to the specific state or local government entities that participate in work on or under a federal contract or subcontract. The coverage is narrower than that which applies to employers in the private sector.